Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84
	)	
	)	

USTELECOM OPPOSITION TO PUBLIC KNOWLEDGE PETITION FOR WAIVER AND MOTION TO HOLD IN ABEYANCE

Pursuant to section 1.429 of the Commission's rules,[1] USTelecom – The Broadband Association (USTelecom) opposes the Petition filed by Public Knowledge (Petition)[2] seeking reconsideration of the Second Report and Order (*Order*) in this docket,[3] and its Motion requesting that the *Order* be held in abeyance pending a decision on an application for review filed by Public Knowledge and others in the Ninth Circuit Court of Appeals.[4] The Petition largely rehashes arguments already taken into account by the Commission. Public Knowledge's claims that the Commission ignored the record and that the *Order* eliminated consumer protections are unfounded, and its suggestion that the rules adopted in this *Order* could compromise critical federal agency missions is reckless and is equally unsupported. The *Order* reflects a careful balancing of the needs of consumers with the important goal of removing

[1] *See* 47 C.F.R. § 1.429(f).

[2] Public Knowledge Petition for Reconsideration and Motion to Hold in Abeyance, WC Docket No. 17-84 (Aug. 8, 2018) (Petition).

[3] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Second Report and Order, FCC 18-74 (rel. Jun. 8, 2018) (*Order*).

[4] Petition for Review, *Greenlining Inst., et al. v. FCC,* Case No. 17-73283 (9th Cir.) (filed Dec. 8, 2017).

regulatory barriers that cause unnecessary costs or delay when carriers seek to transition from legacy services to next-generation broadband services. Moreover, the *Order* encourages deployment of next-generation networks to help close the digital divide, and thus is in the public interest.

DISCUSSION

The Petition apparently seeks reconsideration of all "the section 214(a) discontinuance rules promulgated in the [*Order*],"[5] but also seems to argue that none of the rules in the *Order* should go into effect, which would be extraordinary relief. Public Knowledge's arguments neither support nor compel reconsideration, thus the Commission should reject both the Petition and the Motion.

The Petition Provides No New Evidence to Support Its Claims About Potential Harm to Federal Agencies.

The Petition relies on a letter from NTIA as its alleged proof of harm that will ensue if the Commission's enhanced discontinuance procedures are allowed to stand. As an initial matter, Public Knowledge fails to mention that NTIA has repeatedly expressed support for the Commission's efforts to promote technology transitions. The Petition instead focuses on NTIA's expression of "concern" that streamlined regulatory requirements *may* lead to some loss of access to certain functionality by federal departments and agencies.[6] What NTIA's letter does not (and could not) state with any degree of certainty is that critical national security or public

[5] Petition at ii.

[6] *See* Petition at 3 (citing Letter from David J. Redl, Assistant Secretary for Communication and Information, National Telecommunications and Information Administration, U.S. Department of Commerce, to Ajit Pai, Chairman, Federal Communications Commission, WC Docket No. 17-84 (Jul. 19, 2018) (NTIA Letter)).

safety communications *will* be negatively affected by the Commission's actions in this *Order*. Notwithstanding this inconvenient fact, the Petition claims not only that such harms are possible, but that they are "likely," without offering any new (or old) data or other proof to back up those claims. Moreover, essentially the same concerns have been raised multiple times before, including in comments filed in this docket[7] and a petition for reconsideration or clarification filed in the related Technology Transitions docket.[8] The Commission heard and considered those concerns, most recently explaining that it was unpersuaded by claims that government customers would be adversely affected by its further streamlining, stating:

> We have no reason to depart from the expectation that carriers will continue to collaborate with their [enterprise or government] customers, especially utilities and public safety and other government customers, to ensure that they are given sufficient time to accommodate the transition to [next-generation services] such that key functionalities are not lost during this period of change.[9]

USTelecom and others have offered evidence that the speculative harms to federal departments and agencies raised by Public Knowledge and others are just that – speculative – and the Commission apparently agrees. The discontinuance rules ensure that every customer – federal agencies included – get notice of service discontinuances. Moreover, as USTelecom previously noted, "[ILECs] that provide services supporting mission-critical activities like safety, emergency preparedness and response, and national security are well aware that they do. Contract terms and agreements routinely cover mission-critical requirements including continuity of service, and routine communications about proposed network changes and plans to

[7] Ex Parte Comments of the National Telecommunications and Information Administration, WC Docket No. 17-84 (Oct. 27, 2017).

[8] Petition for Reconsideration or Clarification of the National Telecommunications and Information Administration, GN Docket No. 13-5, WC Docket No. 13-3, RM-11358 (Oct. 12, 2016).

[9] *Order* ¶ 38 (internal citations omitted).

ensure continuity already occur on a case-by-case basis as needed."[10] Thus, Public Knowledge's amplification of arguments already addressed by the Commission does not provide a valid basis for reconsideration.[11]

Concerns Regarding the Inaccuracy of Broadband Availability Maps are Unfounded.

Public Knowledge claims that the broadband availability maps are not 100% accurate, and thus cannot be relied upon to demonstrate the availability of another stand-alone facilities-based voice service provider. As purported proof that the maps are "woefully inadequate," the Petition cites to complaints about map accuracy with regard to 4G LTE (wireless) mobile service coverage,[12] but presents no evidence that the maps do not accurately depict the presence of wired facilities-based voice services. Moreover, the Petition presumes that the broadband maps alone would guide the Commission's analysis of whether another stand-alone facilities-based service is available,[13] failing to acknowledge that a provider seeking streamlined discontinuance of a service that will be replaced by a newer technology can present other reliable evidence to show that an alternative facilities-based service is available in the affected area. And, as the Commission notes, customers facing a discontinuance of their legacy voice service can dispute

[10] Comments of the USTelecom Association, WC Docket No. 17-84, at 35 (Jun. 15, 2017) (USTelecom 2017 Comments). *See also Order* ¶ 38 (stating that the Commission does not intend these streamlining actions to disturb existing contractual obligations).

[11] *See* 47 C.F.R. § 1.429(l)(3) (petitions for reconsideration that plainly do not warrant consideration include those relying on "arguments that have been fully considered and rejected by the Commission within the same proceeding").

[12] *See* Petition at 5, nn.14-15. These complaints make sense, given the challenge of measuring wireless coverage over some areas due to natural and manmade contours and barriers.

[13] Petition at 4.

evidence of an adequate replacement service by objecting to the discontinuance application.[14] Thus, any perceived or actual inadequacy of the current broadband availability maps would not compel reconsideration of the discontinuance rules adopted in the *Order*.

The Alternative Options Test and Streamlined Notice Period Reflect a Reasonable Exercise of the Commission's Rulemaking Authority.

The Commission adopted the new alternative options test "[i]n the interest of further encouraging deployment of next-generation networks."[15] Significantly, this test was adopted as a complement to, rather than replacement for the adequate replacement test because, as the Commission explained, there was strong record support for further streamlining of the discontinuance process for legacy voice services, and there was ample data clearly showing that the number of traditional voice lines has "continued to plummet" while the number of interconnected VoIP and mobile voice lines have continued to increase.[16] Given this trend, streamlining the transition to services that the public largely is already choosing over traditional voice services, with appropriate safeguards, clearly serves the public interest, allowing resources to be quickly redirected so the public can receive the benefits of new next-generation networks.[17]

Many of the complaints in the Petition have already been considered by the Commission. For example, Public Knowledge here complains about the lack of performance standards in the new alternative options test, accusing the Commission of abdicating its statutory duty to promote the public interest and of choosing to ignore the entirety of the previous record before it.[18]

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[14] *Order* ¶ 26 (explaining that "the discontinuance process provides an additional backstop that encourages carriers to communicate with their customers up-front").

[15] *Order* ¶ 29.

[16] *Order* ¶ 32

[17] *Id.*

[18] Petition at 8-9.

Public Knowledge leveled similar complaints in previous comments, insisting that the Commission must address the record in prior proceedings that explained the necessity of section 214 rules.[19] It is clear from the *Order, however,* that the Commission did consider the full record before it. That it declined to agree with Public Knowledge's position is not a basis for reconsideration. And Public Knowledge's emphatic repetition of these same arguments does not make them more persuasive the second time around.

The Petition further argues that reconsideration is necessary due to the inconsistency between "the stringent performance standards for replacement services" under the adequate replacement test adopted in a prior order and the absence of such standards under the alternative options test adopted in this *Order.*[20] But this view ignores the Commission's explanation and rationale for giving applicants a choice between the two options, either of which will ensure that customers experience "a smooth transition to a voice replacement service that provides capabilities comparable to legacy TDM-based voice services and, often, numerous additional advanced capabilities."[21] This view also ignores key findings about the current market for voice services. USTelecom has stated it this way:

> Requiring "exit approval" may have made sense decades ago at a time when ILECs held telephone monopolies, there was no or nascent wireless service, and cable providers only offered video services. But that is no longer the case. Widespread competition for voice and data services warrants a different regulatory approach to govern providers that must seek approval to

[19] Comments of Public Knowledge and Center for Rural Strategies, WC Docket No. 17-84, at 3-4 (Jan. 17, 2018).

[20] Petition at 6.

[21] *Order* ¶ 34.

> discontinue legacy services if the goal is to make sure they continue to heavily invest in broadband infrastructure.[22]

That is, the market conditions that supported stringent discontinuance rules decades or even a few years ago no longer exist, so the Commission has appropriately revisited those rules and adjusted them to fit current conditions. With 11% of U.S. households subscribed to legacy voice services, and that share continuing to decline,[23] impeding technology transitions in favor of maintaining costly and outdated voice services for fewer and fewer customers is not in the public interest.

The Petition also broadly complains about the Commission's purported "inconsistent approach [sic] rulemaking in regard to the amount of time consumers have to file comment,"[24] citing to "the condensed ten day timeframe the *Order* established for consumers have [sic] to file comments in opposition to discontinuance."[25] In circular fashion, Public Knowledge labels its own prior assertions made in other contexts as "previous findings of fact" they claim were ignored by the Commission in this *Order*. These claims are factually inapposite for two reasons. First, the Commission's "finding" that notice absent a regulatory mandate can be unreliable was made in response to assertions that *direct notice to retail customers of planned network changes* is not necessary.[26] In contrast, the context here is service discontinuances, and no commenter

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[22] USTelecom 2017 Comments at 31.

[23] Patrick Brogan, USTelecom Industry Trends and Metrics 2018 (Mar. 1, 2018) at 10, available at https://www.ustelecom.org/broadband-industry/broadband-industry-stats (visited Oct. 4, 2018).

[24] Petition at 6.

[25] Petition at 9.

[26] *See* Petition at 10; s*ee also Technology Transitions, et al.*, GN Docket No. 13-5, WC Docket No. 05-25, RM-11358, RM-10593, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9397, ¶ 41 (2015).

has asserted that *eliminating* the notice mandate would be appropriate. Second, although the Commission cited to Public Knowledge's comments claiming that a single letter or online FAQ may not address individualized questions, it was referring to consumer outreach and education requirements, which are no longer applicable to carriers seeking to discontinue legacy voice services.[27] In any event, the Petition falls far short of demonstrating that the ten-day comment period for certain categories of discontinuance applications harms consumers or otherwise is against the public interest.

Another shortcoming of the Petition is that it is unclear as to the specific relief sought regarding the comment period. Specifically, Public Knowledge asks the Commission to "reinstate the 180-day notice period for customers of discontinued services," but there was no such previous discontinuance notice period to reinstate.[28] The Commission is not required to guess at the precise relief Public Knowledge seeks; thus, it would be appropriate for the Wireline Competition Bureau to deny or dismiss this aspect of the Petition.[29]

Other arguments in the Petition are equally unpersuasive. For example, Public Knowledge asserts that the Commission assumes and believes "that market-based incentives are sufficient to ensure that carriers provide adequate replacement services to consumers in the event

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[27] *See* Petition at 10. The Commission eliminated those requirements based on findings in the record that they were "unduly burdensome in light of current marketplace incentives and carriers' normal business practices of providing their customers with timely and necessary information regarding replacement voice services in a technology transition." *Order* ¶ 22.

[28] *See* Petition at 11. In the cited paragraph, the Commission extended the previously granted streamlined periods for comment and automatic grant to 10 and 25 days, respectively, for applications seeking to permanently discontinue data services below 25/3 that have been grandfathered for at least 180 days. It also streamlined the comment and automatic grant periods for applications to permanently discontinue data services below 1.544 Mbps that were previously grandfathered for 180 days to 10 and 31 days, respectively. *Order* ¶ 7.

[29] *See* 47 C.F.R. §1.429(c), (l)(4).

of service discontinuance," and that this belief warrants reconsideration because it is misguided and unsupported by evidence.[30] This argument is hard to follow, but even if that were shown to be the Commission's belief, reconsideration of that belief would not compel a rule change. In any event, the Commission is entitled to deference regarding its assessment of the record and its predictive judgments about whether the market is competitive enough to ensure that adequate replacement services are available to consumers, absent a showing that it is acting in an arbitrary and capricious manner. In this instance, the Commission relies on more than that singular basis for its rulemaking decisions, so reconsideration would not provide the outcome that Public Knowledge apparently seeks.

The Petition Fails to Make a Case for Holding the *Order* in Abeyance.

The referenced litigation pending in the Ninth Circuit Court of Appeals challenging the 2017 *Wireline Infrastructure Order* filed by Public Knowledge and others, like this Petition, seeks to slow down the Commission's efforts to accelerate wireline broadband deployment by removing barriers to infrastructure investment. That challenge, however, raises distinct issues and seeks review of different rules adopted in a previous order. Specifically, the two issues described in the petitioners' brief are whether the Commission's decision to change the definition of "service" in section 214 violates the plain meaning of the statute, and whether the Commission's change in policy was arbitrary and capricious.[31] Disposition of those issues in no way controls disposition of the distinct issues raised in this Petition.

[30] Petition at 12.

[31] *See* Petitioners' Opening Brief, *Greenlining Inst. et al. v. FCC*, Case No. 17-73283 (9th Cir.) (filed Sep. 26, 2018).

Further, although it did not style its Motion as a petition for stay, Public Knowledge essentially seeks a stay of this *Order*, but makes no attempt to show that such extraordinary relief is warranted.[32] The Motion is a half-hearted attempt to slow down and undermine the important progress being made in this docket, and thus it should be summarily denied.

Respectfully submitted.

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[32] Presumably because the Petition does not come close to making the requisite showing for a stay: (1) a likelihood of prevailing on the merits; (2) irreparable harm absent a stay; (3) other parties will not be harmed if the stay is granted; and (4) stay is in the public interest. *See, e.g., Business Data Services in an Internet Protocol Environment*, Order Denying Stay Motion, 32 FCC Rcd 5537, 5538 (2017) (citations omitted).